

STATE OF MICHIGAN  
COURT OF APPEALS

---

SUSAN CHRISTINE WOOD,

Plaintiff-Appellant,

v

BRIAN DAVID WOOD,

Defendant-Appellee.

---

UNPUBLISHED  
February 14, 2003

No. 231341  
Van Buren Circuit Court  
LC No. 98-044928-DO

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In this divorce action, which involves issues concerning the distribution of the marital estate, plaintiff appeals as of right the judgment of divorce. We affirm.

At the time plaintiff filed for divorce, the parties had been married four years. No children were born of this marriage; however, plaintiff had three children from a previous marriage and defendant had two children from a previous marriage. At the time the parties married, plaintiff had a financial estate that was primarily the result of assets she accumulated from her previous marriage. Included in that estate were what is referred to as the “Clara Drive home,” in which plaintiff and defendant later lived with their children, and a Standard Federal account, which was later rolled over into an Old Kent account. At issue here is the court’s distribution of the contents of the Old Kent bank account and the equity in the “Clara Drive home” as part of the marital estate.

A trial court’s findings of fact will not be reversed unless clearly erroneous. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if, after review of the entire record, the reviewing court is left with the “definite and firm conviction that a mistake has been made.” *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). This Court gives special deference to a trial court’s findings of fact when based on the credibility of witnesses. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court’s findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

When formulating a property distribution, the trial court must first determine whether an asset is a marital asset or a separate asset. A marital asset is property accumulated through the joint effort of the parties during their marriage. *Leverich v Leverich*, 340 Mich 133, 137; 64 NW2d 567 (1954). Generally, marital assets are subject to division between the parties but the parties' separate assets may not be invaded. *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). Absent a valid agreement, the trial court's goal in distributing marital assets in a divorce is to reach an equitable distribution in view of the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997).

Plaintiff first contends that the source of funds used to purchase the Old Kent Bank certificates of deposit were plaintiff's separate funds, and not part of the marital estate. Further, plaintiff asserts that defendant had pertinent records in his possession during trial that he failed to produce, giving rise to the inference that they were adverse to him. Defendant, on the other hand, asserts that he contributed to the Old Kent account, and that he did not intentionally withhold records in his possession, and thus, that the trial court was correct in determining that the account was a marital asset.

In the instant case, the trial court concluded, with regard to the account at issue:

Although various deposits and withdrawals were made during the marriage, those assets were presumably used to provide for the marriage. At this stage of the marriage, it is impossible to determine the source of the assets remaining in the account. This account was used by the family for various family expenses. The account at times included Plaintiff's separate assets of the Promissory Note Payments, Defendant's separate asset of cash received from the sale of the Wickford property, the marital asset of interest accumulated on the assets as they were invested in the Standard Federal/Old Kent Money Market/Certificate of Deposit accounts.

Giving the trial court the requisite deference with regard to its determinations of credibility, *Draggou, supra*, the testimony in this case supports the conclusion that both parties contributed to the Old Kent account during the marriage, thus rendering it a marital asset. Specifically, evidence on the record indicates that defendant deposited into that account \$50,000 from the sale of the Wickford house, as well as money from the sale of his automobile. Moreover, the evidence indicates that the account was a joint account and was treated as such by the parties during the course of their marriage. In light of this evidence, the trial court did not err in holding that the money in the account had various origins over the years of the parties' marriage, and that the specific origin of the funds remaining in the account upon the parties' separation could not be ascertained.

Furthermore, the trial court's award of \$35,000 of the \$100,000 Old Kent account to defendant was fair and equitable. As noted, defendant contributed to the account throughout the marriage. Further, as this Court has observed, when a spouse takes care of the home and the needs of the family, the spouse contributes to the marital prosperity. *Reeves v Reeves*, 226 Mich App 490, 494-495; 575 NW2d 1 (1997). Here, contrary to plaintiff's contentions, the record demonstrates that defendant contributed to the overall marital prosperity by taking care of the

home, attending to plaintiff's needs and to the needs of the children. Accordingly, although the account may have been funded initially by funds from plaintiff's divorce judgment from a previous marriage, that fact alone does not justify precluding defendant a portion of this marital property.

Plaintiff also alleges that defendant's failure to produce pertinent records with respect to the Old Kent account gives rise to an adverse inference against him. *Grossheim v Associated Truck Lines, Inc*, 181 Mich App 712; 450 NW2d 40 (1989). However, there is no clear evidence that defendant intentionally concealed the records; there are only unsubstantiated allegations on the part of plaintiff. Furthermore, defendant insists that he has attempted, albeit unsuccessfully, to locate the records at issue. Moreover, testimony indicates that the records were unorganized and "a mess." Based on the foregoing, plaintiff's argument is without merit.

In accordance with the factual determinations, which were supported by witness testimony, and because the trial judge was in a better position to determine witness credibility, we find the trial court correctly held that the Old Kent account represented marital property and, further, that the trial court's distribution of such property was fair and equitable.

Next, plaintiff argues that the Carla Drive property, including appreciation, was not intended to be a part of the marital estate. Furthermore, plaintiff insists that defendant failed to show that his contributions to the residence added to its appreciation. Defendant, on the other hand, asserts that the trial court was correct in concluding that defendant contributed to the appreciation of the Carla Drive home, and that the appreciation of the property was a marital asset subject to division.

Michigan law has clearly established that an appreciation in value during the marriage of a party's premarital asset is not part of the marital estate if the appreciation was wholly passive. However, an asset that appreciates due to contribution during the marriage is subject to division as a marital asset upon divorce. *McNamara, supra* at 185. Furthermore, it has been established that the sharing and maintenance of a marital home affords both spouses an interest in any increase in its value by either equity payments or appreciation over the term of the marriage and that any such increase is part of the marital estate. *Reeves, supra* at 490.

In this case, the trial court determined:

It is undisputed that the Defendant, Brian Wood, did considerable work on the marital residence. He worked on or made improvements to the deck, the house siding, the exercise room . . . and the entire downstairs.

The plaintiff argues that Mr. Wood's work was shoddy and that he tore up a perfectly good remodeled basement. Yet this Court finds that those arguments to be hollow. . . . .

Therefore, there has been an increase in the value of the home of approximately \$91,000, with the carpentry work of Mr. Wood taken into account.

Obviously, some of the increase in the value of the home is attributable to an increase in its location and the public demand for Eagle Lake property;

however, since the home is a marital asset, Mr. Wood is entitled to share in the increase in value, regardless of the source.

Evidence on the record supports this conclusion. The Clara Drive home functioned as the marital residence. Defendant gave extensive testimony concerning the repairs and renovations he made to the home. Carol Hensely and Charlene Wood, also testified regarding the improvements defendant made to the home. Plaintiff herself admitted to the work defendant had done on the master bedroom and laundry room. Moreover, as noted, the record demonstrates that defendant contributed to the overall marital prosperity.

Again, in accordance with the factual determinations, which were supported by substantial witness testimony, and because the trial judge was in a better position to determine witness credibility, we conclude that the trial court correctly included the property as marital property, and further, that the trial court's distribution was fair and equitable.

Affirmed.

/s/ David H. Sawyer  
/s/ Hilda R. Gage  
/s/ Michael J. Talbot